over to the Society of the residue of the testator's estate, *held,* that the Society was not incapable of taking under the devise. *Bowman* v. *Secular Society, Limited,* [1917] A. C. 406.

For discussion of this case, see article by Dean Lee in this issue.

BUILDING RESTRICTIONS—EMINENT DOMAIN—PUBLIC USE.—Petitioner proceeded under a statute providing that if the land court finds that the enforcement of a restriction would be inequitable it shall register title to the land free from the restrictions, provided, that in case of damage resulting therefrom, a reasonable compensation shall be paid to the owner. *Held,* that restrictions, requiring that no building costing less than $15,000 should be erected and that any building so erected should not be used as an apartment house or for mercantile purposes, give a property right and the statute is therefore unconstitutional as involving the taking of property for a private use. *Riverbank Improvement Co.* v. *Chadwick,* (Mass., 1917), 117 N. E. 244.

This case adopts the modern doctrine that such a restrictive covenant gives a property right and is not a mere personal covenant. 14 MICH. L. REV. 219. The principal question involved in this case is a determination of what is a public use. There are three different views. The old idea that property is practically absolute in the owner is seen in *Minnesota Canal and Power Co.* v. *Koochiching Co.,* 97 Minn. 429, in which it was held that a use is not public unless the public as a whole has the right to resort to the property for the use for which it was acquired. The opposing view that public use means public benefit or advantage is found in *Tanner* v. *Treasury Tunnel Mining and Reduction Co.,* 35 Col. 593. Another line of decisions, and probably the modern tendency, repudiates the doctrine that any enterprise which indirectly promotes the public prosperity is necessarily a public use and holds that the true definition lies between the two opposing doctrines. *Albright* v. *Sussex County Lake and Park Association,* 71 N. J. L. 303. An attempt to compel a railroad company to permit private persons to erect private grain elevators upon its right of way is a taking for a private use. *Missouri Pacific R. R. Co.* v. *Nebraska,* 164 U. S. 403. A statute permitting an indiivdual to enlarge the ditch of another and thereby obtain water for his own land is constitutional in view of the facts of the case and the peculiar conditions existing in the state of Utah. *Clark* v. *Nash,* 198 U. S. 361. The state may forbid the erection of buildings beyond a certain height in order to preserve architectural symmetry. *Attorney General* v. *Williams,* 174 Mass. 476. A statute which authorized the taking down of a dam upon payment of compensation for loss to the mill owner is valid. *Talbot* v. *Hudson,* 16 Gray (Mass.) 417. A statute authorizing the taking of land for park purposes is constitutional. *Shoemaker* v. *United States,* 147 U. S. 282. It is a public use to take land used for a quarry in order to preserve the scenic beauty of a river and a park. *Bunyan* v. *Palisades Park Commissioners,* 153 N. Y. Supp. 622. These and many other decisions seem to make this decision inconsistent with the modern trend. Here, the purpose for which the restrictions were created had failed. The court found that it would be clearly inequitable to enforce them.

It would seem that the public is interested in having such restrictions, that have outlived their usefulness, destroyed and sufficiently so to authorize their taking under eminent domain proceedings.

CONSTITUTIONAL LAW—"EQUAL PROTECTION OF THE LAWS"—COSTS.—Chapter 87, section 5, Oklahoma Session Laws 1915, provided that a docket fee of $25 should be taxed, collected and recoverable as other costs in each case filed in the Supreme Court. Petitioner claimed that the provision was unconstitutional because the amount of the fee was unreasonable considering the service rendered. *Held,* that the provision was constitutional. *In re Lee,* (Okla. 1917), 168 Pac. 53.

Petitioner challenged the reasonableness of the fee, yet the court's argument and citations go to prove little more than that the constitutional provision against selling justice "was never intended to guarantee the right to litigate entirely without expense to the litigants * * *" *Malin* v. *Lamoure County,* 27 N. D. 140. The position is sound as far as it goes, but it is far from a complete answer to the problem propounded. A $25 fee may be so large as to constitute a denial of the equal protection of the laws. The broad reasoning of *Harrison Co.* v. *Willis,* 7 Heisk. (54 Tenn.) 35, eliminates any investigation into the reasonableness of the amount by calling the docket fee a tax on litigation and grouping it with general taxes. *Weston* v. *Charleston,* 2 Pet. 449. But that grouping cannot be relied on here because the act now in question originated in the Senate and it gains its validity only by being distinguished from taxes for revenue. *Henderson* v. *State ex. rel. Stout,* 137 Ind. 552; *Northern Counties Trust* v. *Sears,* 30 Ore. 388. If, then, the reasonableness of the docket fee must be considered, the largest amount actually approved by a court seems to be $6. *Swann* v. *Kidd,* 79 Ala. 431. Still this might not make $25 unreasonable. If the statute had provided for an exception upon filing an affidavit of poverty, it would probably be a clear case. One would like to know whether the state may make a profit on its litigation; whether any uniform fee is reasonable so long as the state makes no profit; whether reasonableness is to be tested only by the possibility of discrimination among the litigants; whether the fee may be more than a reasonable compensation for the actual labor performed by the clerk. The facts seem to answer the last question in the negative unless answers to all the questions be considered *dicta* on the ground that the docket fee was for the Supreme Court and might well be considered as intended to repress appeals. *Harrigan* v. *Gilchrist,* 121 Wis. 127. The question then would be whether the right to abolish gives the right to regulate without judicial control.

CONSTITUTIONAL LAW—POLICE POWER—UNIFORM STATE GRADING ACT.—N. Dak. Laws 1917, c. 56, proposed to create uniform state grades for all grain by having an expert state inspector appointed to define and publish the grades. He was, also, to appoint deputy inspectors and it was made unlawful for any person operating a public warehouse to purchase grain without being licensed as a deputy unless the grain had been previously graded, weighed, and inspected by a deputy. The towns in various quarters were to furnish means for weighing and inspecting; the state inspector was to prescribe the